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Fact Sheet

Variances

What is a variance?

A variance is an order issued by the Minnesota Department of Labor and Industry to allow an employer to deviate from the requirements of a MNOSHA standard. Variances can be temporary or permanent. Variances are to be written to cover *future* activity by the employer and his or her employees. The department can refuse to accept an application for a variance regarding a contested citation.

What is a temporary variance?

A temporary variance allows an employer more time to come into compliance with an OSHA standard. An employer can apply to the department for a variance if:

- ✓ the employer is unable to comply with a new standard by its effective date because the employer currently lacks the needed technical expertise, materials and equipment, or because needed construction work will not be completed by the effective date;
- ✓ the employer is taking all feasible precautions to protect employees from the hazards covered by the standard; and
- ✓ the employer has an effective plan to come into compliance with the new standard as soon as possible.

To apply for a temporary variance, an employer must submit an application to the department containing:

- ✓ the standard or the portion of the standard for which the employer is requesting the variance;
- ✓ a detailed statement describing why the employer cannot come into compliance by the standard's effective date, endorsed by employees who have first-hand knowledge of the process or hazard in question;
- ✓ a description of all the measures the employer will be taking to protect the employees from the hazards covered by the standard;
- ✓ a statement of when the employer expects to be in compliance with the standard, along with a description of the specific steps the employer has taken and will take to meet the requirements of the standard, including completion dates for all steps; and
- ✓ a certification that the employer has notified employees about the application by providing written copies to their union representative, posting a summary of the application in the workplace and

describing where in the facility the summary is posted, and taking other appropriate measures to inform employees of the application and their right to request a hearing on the matter by the department.

If granted, a variance is effective for either the time the employer needs to come into compliance or one year, whichever is shorter. The order by the department granting the variance will describe the engineering controls, work practices, administrative controls and personal protective equipment the employer must use for the covered process while the variance is in effect. It will also contain a detailed description of the employer's plan to achieve compliance. The department will notify the employees and, where appropriate, their union representatives of the application and their right to request a hearing. A temporary variance can be renewed twice, provided the extension request is filed at least 90 days prior to the current expiration date. An employer can also request an interim variance of up to 180 days while the application is being considered, provided the affected employees are notified of the interim variance.

What is a permanent variance?

A permanent variance recognizes there may be other ways to effectively protect employees from hazards other than those specified in a particular OSHA standard. In the application for the variance, the employer must provide detailed information about engineering controls, work practices, administrative controls and personal protective equipment that will be used, and demonstrate that these measures would protect employees from injury and illness at least as effectively as the measures required under the standard in question. Employees must be notified in writing of the application for a permanent variance and their right to request a hearing about the matter. The order granting the variance will contain the same information about the specific conditions and methods of compliance with the variance as that of a temporary variance. A permanent variance can be modified or revoked by the employer, the employees or the department at any time after six months of the issuance date.

What if a variance is denied?

The department will issue an order denying the variance request. This order will contain the employer's name and address, the standard or portions of the standard applicable to the requested variance, the proposed extent and duration of the requested variance, and a concise statement of the reasons the request is being denied. The employer can file a written objection to the denial with the department. The objection must be postmarked within 15 days of receipt of the denial. The department then has seven days in which to send the objection with all the relevant documentation to an administrative law judge, who will conduct a hearing into the matter. Affected employees must be notified by the employer about the hearing and given an opportunity to participate in the hearing.

What about variances granted by federal OSHA covering several states?

MNOSHA will honor a federal variance, provided:

- ✓ the employer has not applied to the department for a separate state variance;
- ✓ the federal application included Minnesota;
- ✓ the federal standard from which the variance was granted has been adopted by MNOSHA without change; and
- ✓ the department receives no objections to the variance.